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Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory

Security Council
Sixty-fifth year

Identical letters dated 9 April 2010 from the Permanent Observer of Palestine to the United Nations addressed to the Secretary-General and the President of the Security Council

I have the honour to enclose herewith a petition for "Urgent action on human rights violations by Israel / Desecration of the Ma'man Allah (Mamilla) Muslim Cemetery in the Holy City of Jerusalem", filed by Palestinian individuals whose ancestors are buried at Ma'man Allah cemetery in addition to several other non-governmental organizations from Palestine, Israel and the United States, who oppose the establishment of so called "Centre for Human Dignity and Museum of Tolerance" on the human remains of the dead Muslims buried in the Cemetery (see annex).

The Charter of the United Nations "reaffirmed faith in fundamental human rights, and dignity and worth of the human person" and committed all Member States to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion". Ironically both the Centre and Museum bear names that do not befit this act of bigotry and contempt to dignity and worth of the human person. Protection of cultural heritage and cultural property, including religious sites such as cemeteries, are guaranteed by international human rights instruments such as the United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage Convention, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Convention on Economic, Social and Cultural Rights. Furthermore building on the cemetery constitutes a violation of basic human rights including the right to manifest religious beliefs, the right to family and culture and the right to freedom from discrimination, as set forth in the Convention on the Elimination of All Forms of Racial Discrimination.

Such reprehensible actions show that the Israeli Government intends to continue its adopted unlawful policy of discrimination and contempt towards Palestinian Muslim and Christian holy places as it has been doing for over 62 years with impunity. If left unchecked, the continuation of such unlawful policies and

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inflammatory provocations will certainly raise the tensions and pose a threat to peace and security. Therefore we expect that due action will be taken in this regard to put an end to these violations.

I kindly request that the text of the present letter and its annex be circulated as a document of the tenth emergency special session of the General Assembly, under agenda item 5, and of the Security Council.

(*Signed*) Riyad **Mansour**
Ambassador
Permanent Observer of Palestine to the United Nations

Annex

Petition for urgent action on human rights violations in Mamilla Cemetery by Israel

(www.mamillacampaign.org)

Executive summary

A. THE MAMILLA CEMETERY: ITS HISTORY AND IMPORTANCE

The Petitioners are individuals whose human rights have been violated by the destruction and desecration of an ancient Muslim cemetery, the Ma'man Allah (Mamilla) cemetery in Jerusalem, by the government of Israel working in conjunction with the Simon Wiesenthal Center ("SWC") of Los Angeles, California, USA. Petitioners also include human rights non-governmental organizations concerned about this desecration. A significant portion of the cemetery is being destroyed and hundreds of human remains are being desecrated so that SWC can build a facility to be called the "Center for Human Dignity - Museum of Tolerance" on this sacred Muslim site.

The Mamilla cemetery has been a Muslim burial ground since the 7th century, when companions of the Prophet Muhammad were reputedly buried there. Before that, it was the site of a Byzantine church and cemetery. It is well attested as housing the remains of soldiers and officials of the Muslim ruler Saladin from the 12th century, as well as generations of important Jerusalem families and notables. The cemetery grounds also contain numerous monuments, structures, and gravestones attesting to its hallowed history, including the ancient Mamilla Pool, which dates back to the Herodian period, or the 1st century B.C. Since 1860, the cemetery has been clearly demarcated by stone walls and a road surrounding its 134.5 dunums (about 33 acres). The antiquity of the cemetery was confirmed by the Chief Excavator assigned to excavate the Museum site by the Israeli Antiquities Authority (IAA), who reported that over 400 graves containing human remains buried according to Muslim traditions were exhumed or exposed during excavations on the Museum site, many dating to the 12th century. His estimation that at least two thousand additional graves remain under the Museum site in 4 layers, the lowest dating to the 11th century, also verifies the antiquity and importance of the cemetery.

The Mamilla cemetery's significance was recognized by successive authorities. It was declared an historical site during the British Mandate by the Supreme Muslim Council in 1927, and as an antiquities site by the

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British in 1944. It continued in active use as a burial ground throughout the Mandatory era. In 1948, soon after the new State of Israel seized the western part of Jerusalem, where Mamilla is located, the Jordanian government objected to any desecration of the cemetery. The Israeli Religious Affairs Ministry acknowledged in response Mamilla's great importance to the Muslim community in a communiqué, stating:

> [Mamilla] is considered to be one of the most prominent Muslim cemeteries, where seventy thousand Muslim warriors of Salah al-Din al-Ayubi's [Saladin's] armies are interred along with many Muslim scholars. Israel will always know to protect and respect this site.

In 1986, in response to urgent protests to the United Nations Education, Scientific and Cultural Organization (UNESCO) regarding destruction of parts of the Mamilla cemetery, Israel avowed that "no project exists for the deconsecration of the site and that on the contrary the site and its tombs are to be safeguarded."[iv] Subsequently, the IAA itself included Mamilla on its list of "Special Antiquities Sites" in Jerusalem, and determined it to be a site of especially high value with "historical, cultural and architectural importance," on which there should be no development, and which should be rehabilitated and maintained.

These earlier proclamations by Israeli authorities appeared to recognize the sacredness with which Muslims view their burial grounds, and the Mamilla cemetery in particular. Islamic jurisprudence consistently holds burial sites to be eternally sanctified, and disinterment of human remains is expressly prohibited. As with other monotheistic religions, the rites and beliefs associated with death and burial are an integral part of the religious practices and beliefs of Muslims everywhere.

B. ISRAEL'S PROGRESSIVE DESECRATION OF MAMILLA FAILS ITS OBLIGATION TO PROTECT HOLY SITES UNDER ITS CONTROL

The western part of Jerusalem, including the Mamilla cemetery, came under Israeli control in 1948. This was despite United Nations General Assembly Resolution 181 of 1947, which aimed to create an international corpus separatum for Jerusalem and ensure the protection of all holy sites. The resolution specified that "existing rights in respect of Holy Places

and religious buildings or sites shall not be denied or impaired," and that "Holy Places and religious buildings or sites shall be preserved. No act shall be permitted which may in any way impair their sacred character." On 9 December 1949, the United Nations General Assembly, in resolution 303(IV), restated its intention that "Jerusalem should be placed under a permanent international regime, which should envisage appropriate guarantees for the protection of the Holy Places, both within and outside Jerusalem ..." In 1967, after occupying the remainder of Jerusalem, Israel passed the Holy Places Law which purports to protect religious sites from violators.

Notwithstanding the above, the government of Israel, over several decades has progressively encroached upon the cemetery with the construction of roads, buildings, parking lots and parks. Israel has ignored the repeated protests of Jerusalemites and other Palestinians (as well as Jews and others) against these desecrations, which included appeals to international bodies such as UNESCO. Amir Cheshen, former Arab-Affairs Advisor to Jerusalem Mayor Teddy Kollek from 1984-94, who has first-hand knowledge of such events, confirmed this history of protest, stating that:

> Islamic stakeholders, particularly in Jerusalem, also among the Muslim community both in Israel and abroad, never abandoned their interest in what transpired in the cemetery, nor their sensitivity in this regard. And they always viewed construction that damaged the tombs and human remains as a violation of sanctity and their religious sensibilities.

The latest incursion, and the one most outrageous to the Petitioners and others, involves the construction of this so-called "Center for Human Dignity - Museum of Tolerance" by the SWC, with the support of the Israeli government. This construction project has resulted in the undignified disinterment and disposal of several hundred of graves and human remains, the exact amount and whereabouts of which are currently unknown, and threatens to erect a monument to "Human Dignity" and "Tolerance" atop thousands more graves. It has proceeded in the face of ongoing opposition to this desecration by Palestinian individuals and organizations, by numerous Jewish individuals and organizations who

morally oppose the project, and notwithstanding opposition from the current Israeli Mayor of Jerusalem, who early on urged that the museum not be built on the Mamilla cemetery site.

The petitioners have exhausted all means at their disposal to prevent further desecration of this sacred cemetery and, hence, bring the matter to your urgent attention, as Israel's conduct blatantly violates international human rights law, as detailed below.

C. ISRAEL'S TREATMENT OF MAMILLA IS PART OF A PATTERN OF DISREGARD FOR MUSLIM RELIGIOUS SITES

Israel's actions on the Mamilla cemetery illustrate the state's disdain for the religious and spiritual beliefs and sentiments that holy sites engender among Palestinians and Muslims everywhere. The disparity in the treatment of Jewish and non-Jewish holy sites is clear. There is a marked inequality, for example, in the treatment of Jewish remains found on construction sites and those of non-Jews. This is illustrated by the fact that Jewish religious authorities are immediately called upon when it is believed that there are Jewish remains so that they be accorded proper religious treatment and excavations may be stopped. In contrast, as in the case of Mamilla and other non-Jewish sites known to be Muslim cemeteries, no Muslim religious authorities were consulted in order that the remains and the cemetery be dealt with according to Islamic law. As

Gideon Suleimani, the Chief Excavator appointed by the Israeli Antiquities Authority (IAA) to excavate the Museum site on Mamilla attested, "[A Ministry of Religion official] came to the site and told me, 'If one Jewish skeleton were found, I would stop the excavations immediately.' But no Jewish remains were found and [he] was not concerned." This attitude on the part of Israeli authorities, and the discriminatory practices underlying it, is confirmed by a recent study on the treatment of non-Jewish holy sites in Israel, which documents several cases in which Israeli authorities continued construction works despite the discovery of Muslim graves during construction projects.

> The desecration occurring at Mamilla is, thus, part of a larger pattern of disrespect, denigration, and desecration of the cultural heritage, including religious sites such as cemeteries, of non-Jewish individuals and groups by the Israeli state. This pattern of discrimination was discussed in a recent report by the Special Rapporteur on freedom of religion and belief, stating that:
>
> all the 136 places which have been designated as holy sites until the end of 2007 are Jewish and the Government of Israel has so far only issued implementing regulations for Jewish holy sites.

The United States State Department's International Religious Freedom Report of 2009 similarly found that:

> The Government [of Israel] implements regulations only for Jewish sites. Non-Jewish Holy Sites do not enjoy legal protection . . . because the Government does not recognize them as official holy sites...While well-known sites have de facto protection as a result of their international importance, many Muslim and Christian sites are neglected, inaccessible, or threatened by property developers and municipalities.

Given this pattern of discrimination, not only with regard to the treatment of holy sites, but in all facets of the Israeli government's relationship with

the Muslim and Christian communities under its control, It is no surprise that attempts to stop the desecration of Mamilla, legally and otherwise, have been rebuffed by Israeli authorities.

D. EXHAUSTION OF REMEDIES

Numerous avenues have been pursued in attempting to stop the current desecration of the Mamilla cemetery. Resort to the Israeli judiciary has been futile. Although a petition to halt construction presented to the Israeli Muslim Shari'a Court was granted, the Israeli High Court overruled it, holding that the Shari'a court lacked jurisdiction. The High Court ultimately ruled, on a separate petition, that construction on the cemetery was lawful.

Significantly, since the High Court ruling in October, 2008, it has been revealed that the High Court's decision was based on serious misrepresentations made by the Israeli Antiquities Authority (IAA) regarding the extent of graves and human remains located on the site and discovered during excavations. In particular, Gideon Suleimani, the Chief Excavator assigned by the IAA to excavate the site, attested that the IAA withheld from the High Court his considered conclusion that the site should not be approved for construction. This conclusion was based on the facts that:

- his archaeological excavations were completed in only 10% of the entire project site, while in the remaining 90% of the site, "excavation was either only partial or preliminary";
- "A total of 250 skeletons were excavated, some of them from secondary burials, and another 200 graves were exposed but not excavated," and,
- the site contains at least 4 more as yet unexcavated layers of Muslim graves dating back to at least the 11th century, with an estimated 2000 graves remaining under the site.

Instead of forwarding these conclusions to the High Court, the IAA withheld Suleimani's report and submitted to the Court that there were

no impediements to construction on most of the site, and released it for construction. The High Court ruling relied in large part on the submissions of the IAA that only a small portion of the Museum site contained the majority of the human remains found, that the excavations were otherwise complete, and that "no scientific data remained," all of which contradicted the findings of the IAA's own Chief Excavator, Suleimani. Suleimani has since declared that the IAA "under pressures on the part of the entrepreneurs and politicians, participated in the destruction of a valuable archeological site," and that its conduct constitutes an "archeological crime." As he stated in an interview, "We're talking about tens of thousands of skeletons under the ground there, and not just a few dozen."

A subsequent petition to nullify the IAA's decision to release the site for construction, based on the above revelations, has recently been denied by the High Court on largely procedural grounds, namely, that there was nothing in the second petition that was novel, and that it therefore could not reconsider its previous ruling. While stating that Suleimani's report to the IAA had been submitted to the Court during hearings on the previous petition, the Court did not address, as it had failed to do in its first judgment, the significant contradictions between Suleimani's report and the information provided by the IAA regarding the progress and results of the excavations on the site. Rather, it reiterated the IAA's version of the results, which its Chief Excavator Suleimani attested was "a factual and archaeological lie." This showed a puzzling disregard of the facts that should have been central to the Court's decision in both judgments, namely, that the Museum's construction was taking place on an ancient cemetery site replete with Muslim graves and human remains, which were being desecrated in the process.

This ruling, together with the Court's 2008 ruling, clearly illustrates the Court's bias in favor of allowing the SWC "Center for Human Dignity – Museum of Tolerance" to be constructed. Its decisions make evident that the High Court, in keeping with the Israeli judiciary's clear bias in favor of Jewish interests above those of Palestinians, views Israel's development prerogatives as more important than respecting the religious beliefs of and preserving the cultural heritage of its disdained minority Muslim and Christian populations.

Informal avenues to convince the Israeli authorities and the U.S. backers of the project (the SWC) to consider alternative locations have also been unsuccessful, and have revealed the callousness of these authorities to the claims of Palestinians and Muslims regarding their rights and feelings toward the desecration of the cemetery.

Petitioners thus have no recourse but to international human rights law and the institutions tasked with upholding it, to which this petition is submitted.

E. INTERNATIONAL LAW VIOLATIONS

Construction of the Museum on a portion of the cemetery constitutes a violation of numerous international human rights, including:

I. The right to protection of cultural heritage and cultural property, including religious sites such as cemeteries, as guaranteed by international human rights instruments such as the UNESCO World Heritage Convention, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on Economic, Social and Cultural Rights (ICESCR), and buttressed by extensive international humanitarian law protections, the principles of which are considered customary international law principles.

II.The right to manifest religious beliefs, as propounded in the UDHR and the ICCPR.

III. The right to freedom from discrimination, as set forth in the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the ICCPR and the ICESCR.

IV.The right to family and culture, as set forth in the UDHR, ICCPR, and the ICESCR.

F. REQUESTS FOR ACTION

In light of these violations, the petitioners request the following actions on the part of the officials and bodies addressed herein:

I. Petitioners request that the Special Rapporteur on Freedom of Religion and Belief, the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, and the Independent Expert in the Field of Cultural Rights urgently demand that the Government of Israel:

1. Immediately halt further construction of the Museum of Tolerance on the Mamilla cemetery site;

2. Document and reveal to the petitioners the whereabouts of all human remains and artifacts, as well as archaeological fragments and monuments exhumed in the construction;

3. Recover and rebury all human remains where they were originally found, in coordination with, and under the supervision of, the competent Muslim authorities in Jerusalem; and,

4. Declare the entire historic site of the Mamilla cemetery an antiquity, to be preserved and protected henceforth by its rightful custodians, the Muslim Waqf (public endowment) authorities in Jerusalem.

II. Based on the mandate laid out in the Human Rights Council resolution of October 21, 2009, petitioners request that the United Nations High Commissioner for Human Rights consider this complaint on an urgent basis and investigate and report on Israel's violation of the above human rights, which, together with other Israeli actions that degrade or damage non-Jewish religious sites, constitute a pattern of gross violations of the human rights of Palestinians and Muslims.

III. Petitioners request that the Director General of UNESCO consider this complaint in light of existing UNESCO resolutions on the subject and the human rights violations alleged herein, and coordinate efforts with the above-mentioned United Nations officials in order that the Mamilla cemetery, a cultural and religious heritage site of great value, be preserved and protected.

IV. Petitioners request that the Government of Switzerland, in its capacity as depository of the Fourth Geneva Convention, consider this issue in the context of resuming the High Contracting Parties' Conference to the Fourth Geneva Convention.